

Exhibit 3 (continued)

Annualized Dividend Yields for the Indicated Quarter for
Utilities Retained in the Sample

----- Year = 88 Quarter = 3 -----

Ticker Symbol	Price,1st Month of Qtr-High	Price,1st Month of Qtr-Low	Price,2nd Month of Qtr-High	Price,2nd Month of Qtr-Low	Price,3rd Month of Qtr-High	Price,3rd Month of Qtr-Low	Average Price	Dividends Annual Rate	Annualized Dividend Yield
MAP	31.375	30.625	37.250	30.875	37.125	35.375	33.771	2.600	7.699
MPL	25.000	23.375	25.000	23.750	24.875	23.875	24.312	1.720	7.075
MTP	34.750	33.250	34.750	33.875	36.500	34.375	34.583	2.680	7.749
MWE	19.500	18.250	19.375	17.875	19.625	19.000	18.937	1.560	8.238
NES	23.875	22.250	24.000	22.625	24.000	22.500	23.208	2.040	8.790
NI	11.875	10.500	11.500	10.875	12.125	11.125	11.333	0.600	5.294
NMK	15.375	13.250	13.750	12.875	14.125	13.500	13.812	1.200	8.688
NPT	19.250	18.625	18.500	17.875	18.125	17.750	18.354	1.500	8.173
NSP	31.375	30.000	31.750	30.125	32.875	31.000	31.187	2.120	6.798
NU	20.000	18.625	19.625	18.250	20.625	18.625	19.292	1.760	9.123
NVP	21.250	19.500	20.875	19.000	20.875	19.500	20.167	1.520	7.537
OEC	19.000	17.750	18.875	17.875	18.750	17.875	18.354	1.960	10.679
OGE	32.250	29.875	31.500	29.875	32.875	31.000	31.229	2.280	7.301
ORU	31.250	29.250	30.125	28.500	30.625	29.500	29.875	2.260	7.565
PE	19.000	18.000	19.000	17.125	19.000	17.625	18.292	2.200	12.027
PEG	24.750	22.375	24.000	22.375	24.625	22.000	23.354	2.000	8.564
PGN	23.125	21.000	21.750	20.250	21.625	20.250	21.333	1.960	9.187
PNW	25.750	23.375	23.875	21.000	23.125	22.125	23.208	2.800	12.065
POM	22.875	20.375	21.000	20.000	21.000	20.000	20.875	1.380	6.611
PPL	36.375	34.000	35.625	33.750	35.875	34.625	35.042	2.760	7.876
PPW	36.625	33.500	35.250	34.000	35.875	34.625	34.979	2.640	7.547
PSD	19.625	18.375	19.125	18.000	19.500	18.500	18.854	1.760	9.335
PSR	22.375	21.375	22.000	19.500	22.000	20.875	21.354	2.000	9.366
RGS	18.250	17.500	18.000	16.375	17.875	17.125	17.521	1.500	8.561
SAJ	22.250	21.250	22.750	21.000	22.750	21.000	21.833	1.400	6.412
SCE	32.875	30.750	32.750	31.250	33.625	31.500	32.125	2.480	7.720
SCG	32.625	30.250	31.375	29.750	31.125	29.750	30.812	2.400	7.789
SDO	34.500	32.750	35.500	33.500	36.000	33.500	34.292	2.600	7.582
SIG	30.125	28.500	29.250	26.500	27.625	26.500	28.083	1.700	6.053
SO	23.500	21.875	22.750	21.375	21.875	20.375	21.958	2.140	9.746
SRP	23.500	21.625	22.125	20.875	22.500	21.125	21.958	1.760	8.015
TE	23.875	22.125	23.375	21.750	23.875	22.875	22.979	1.420	6.180
TEP	55.875	52.125	53.000	50.000	54.500	51.500	52.833	3.900	7.382
TNP	20.500	19.500	20.000	18.500	19.875	19.000	19.562	1.470	7.514
TXU	28.500	26.125	29.125	27.750	28.625	27.625	27.958	2.880	10.301
UCU	18.750	17.500	18.875	17.500	19.375	18.500	18.417	1.120	6.081
UEP	23.375	22.500	23.250	21.500	23.875	22.375	22.812	1.920	8.416
UIL	23.750	22.625	23.875	21.875	24.250	21.750	23.021	2.320	10.078
UTL	28.500	27.750	28.000	27.500	29.625	28.000	28.229	2.040	7.227
UTP	30.125	28.500	30.625	28.750	31.125	29.625	29.792	2.320	7.787
WEC	27.125	25.375	26.750	25.250	27.000	25.625	26.187	1.540	5.881
WPH	23.500	22.000	23.125	21.437	23.625	22.125	22.635	1.620	7.157
WPS	22.500	21.125	22.250	21.000	21.500	21.000	21.562	1.580	7.328
WWP	28.000	26.500	27.750	25.750	27.750	26.125	26.979	2.480	9.192

N = 88

[FR Doc. 88-24177 Filed 10-18-88; 8:45 am]

BILLING CODE 6717-01-C

18 CFR Parts 141, 260, and 357

[Docket No. RM88-18-000; Order No. 505]

Statement of Cash Flows To Replace Statement of Changes in Financial Position in FERC Annual Report Forms

Issued October 13, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Amendment of forms.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its annual report forms for electric utilities (FERC Form Nos. 1 and 1-F), natural gas companies (FERC Form Nos. 2 and 2-A) and oil pipeline companies (FERC Form No. 6). The Commission is replacing the current "Statement of Changes in Financial Position," which is one of the basic financial statements in the annual report forms filed by companies subject to Commission regulation, with a "Statement of Cash Flows". The change in statement complies with the Financial Accounting Standards Board's (FASB) Statement of Financial Accounting Standards No. 95 (SFAS No. 95), issued in November 1987.

EFFECTIVE DATE: This order is effective November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the *Federal Register*, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn

Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon and Charles A. Trabandt.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its annual report forms for electric utilities, natural gas companies, and oil pipeline companies. The Commission is replacing the current "Statement of Changes in Financial Position," which is one of the basic financial statements in the annual report forms filed by companies subject to Commission regulation, with a "Statement of Cash Flows". The change in statements complies with the Financial Accounting Standards Board's (FASB)¹ Statement of Financial Accounting Standards No. 95 (SFAS No. 95), issued in November 1987. FASB requires a company to implement this change in financial statements for fiscal periods ending after July 15, 1988.

II. Background

FASB published SFAS No. 95 in response to problems associated with the statement of changes in financial position, which is a basic financial statement. These problems include the use of ambiguous terms, such as "funds", the lack of comparability due to a particular company's emphasis (*i.e.*, whether to emphasize cash, or cash and short-term investments or working capital), and differences resulting from the format of the statement (sources and uses format or activity format). Additionally, FASB intended to recognize an increased interest in a company's cash flows, that is, a company's cash receipts and cash payments during a reporting period, as a measure of liquidity.

On June 6, 1988, the Commission issued a notice of proposed rulemaking (NPR) proposing to replace the current "Statement of Changes in Financial

Position" in FERC Annual Report Form Nos. 1 and 1-F (electric utilities), 2 and 2-A (natural gas companies) and 6 (oil pipeline companies) with a "Statement of Cash Flows."² Rather than report total cash and noncash sources and applications of funds, the proposed statement would require a company to report detailed information about cash receipts and cash payments classified by operating, investing and financing activities.³ The company would show a net cash provided or used total for each activity.

The Commission proposed to adopt the indirect method of reporting net cash flow from operating activities, rather than the direct method. FASB allows either the direct method (reporting cash flows by showing major classes of operating cash receipts and cash payments) or the indirect method (reconciliation of net income to net cash flow by specific adjustments to remove deferrals and accruals of receipts and payments and noncash items). While FASB encourages the use of the direct method, it permits reporting by either method. However, if the direct method is used, a company must also show in a separate schedule the reconciliation of net income to net cash flow. In its proposal, the Commission noted that by adopting the indirect method, a company would not need to separately report the reconciliation of net income to net cash flow which is required by the direct method. Additionally, the Commission believed the indirect method would be administratively easier for most companies.

Although SFAS No. 95 does not specifically address the Allowance for Funds Used During Construction (AFUDC), the Commission proposed to retain the equity portion of AFUDC (Account No. 419.1, Allowance for Other Funds Used During Construction) as a deduction from both net income and gross additions to plant. This type of reporting treats the equity portion of AFUDC as a noncash item, which is deducted from net income. The borrowed funds portion of AFUDC (Account No. 432, Allowance for Borrowed Funds Used During Construction), or capitalized interest, would be treated as a cash item, the same as other capitalized expenditures (material, labor, taxes, etc.), which is not deducted from net income.

² 53 FR. 21,853 (June 10, 1988); 43 FERC 61,405 (June 6, 1988).

³ The proposed "Statement of Cash Flows" appears in Appendices 1, 2, and 3 not published in the *Federal Register*.

¹ The Securities Exchange Commission has statutory authority to establish financial accounting and reporting standards for publicly-held companies under the Securities and Exchange Act of 1934. Since 1973 the SEC has recognized the FASB as the designated organization in the private sector responsible for establishing financial accounting and reporting standards. The mission of the FASB is to establish and improve standards of financial accounting reporting for the guidance and education of the public, including issuers, auditors, and users of financial information. Those standards are, in effect, rules governing the preparation of financial reports. They are officially recognized as authoritative by the SEC (Accounting Series Release No. 150, dated December 20, 1973), and the American Institute of Certified Public Accountants (Code of Professional Conduct as adopted January 12, 1988).

The Commission also noted that companies would use the present schedule for "Notes to Financial Statements" in the FERC annual report forms for other required separate disclosures, such as for noncash investing and financing activities and other events specified by SFAS No. 95. Finally, the Commission noted that the proposed change in statements in the annual report forms would not require any change in the Commission's regulations in Parts 141, 260 and 357.

Fourteen companies filed comments in this rulemaking docket.⁴ These commenters generally support the proposed changes. Several commenters proposed certain modifications to the report forms. These modifications generally address minor problems requiring clarification of certain proposed line items. The Commission is essentially adopting the NOPR as proposed, incorporating some of the commenters' modifications.

III. Discussion

A. Reporting Burden

The public reporting burden for this collection of information is estimated to average 1,215 hours per response for FERC Form No. 1; 30 hours per response for FERC Form No. 1-F; 2,475 hours per response for FERC Form No. 2; 30 hours per response for FERC Form No. 2-A; and 150 hours per response for FERC Form No. 6. These hours include time for reviewing instructions, searching existing data resources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The Commission points out that these hours reflect the total amount of time required to complete these annual report forms. The Commission believes that the replacement of one schedule with another similar one will not change or increase the reporting burden for these annual report forms. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing these burdens, to the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426 (Attention: Marian Obis (202) 357-8173); and to the Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

⁴ See Appendix A for a list of the commenters.

B. Comment Analysis

1. Required Use of Indirect Method for Operating Activities

Seven of the eleven commenters⁵ discussing this issue agree with the Commission's decision to require the use of the indirect method for the operating activities part of the Cash Flow Statement. They state that it is consistent with the current method; allows users to assess differences between accrual basis income and cash flows; is required even for those using the direct method; and is administratively easier for most companies. The remaining commenters believe the Commission should permit the use of either method as does SFAS No. 95.⁶ Further, they contend that the direct method is preferred by FASB and is more meaningful as a measure of cash flows from operating activities.

After considering the merits of the opposing viewpoints, the Commission has decided to retain the requirement to use the indirect method. Uniform reporting is a factor in the Commission's decision, but other factors include compatibility with the present Statement and the likelihood that the indirect method would be used by most companies because it is administratively easier. Moreover, a reconciliation of net income to net cash provided by operating activities is required if the direct method is used.

2. Net Changes in Receivables, Inventory and Payables (Line 10)

Of the four commenters addressing this item, American Electric Power (AEP) and Transcontinental Gas Pipe Line Corporation (Transco) state, correctly, that paragraph 121 of SFAS No. 95 requires "enterprises that use the indirect method to report separately changes in inventory, receivables and payables". In addition, Ohio Edison Co. and the New York State Department of Public Service urge the Commission to separate changes in receivables, payables and inventory that are related to operations from those that are related to construction (investing activities). These two commenters contend that this separation is required by SFAS No. 95. AEP also suggests that payables be combined with line 11 to read "Increase (Decrease) in Payables and Accrued Expenses," in accordance with the

⁵ See Northeast Utilities, American Electric Power, Detroit Edison, New York State Department of Public Service, Ohio Edison, Price Waterhouse and Public Service Company of Indiana.

⁶ See New York State Electric & Gas Corporation, Columbia Gas Transmission Corporation, Public Service Electric and Gas Company and Transcontinental Gas Pipe Line Corporation.

example in paragraph 132 of SFAS No. 95.

The Commission agrees with the above comments that SFAS No. 95 requires separate reporting for net changes in receivables, inventory and payables by operating and investing (construction) activities and has revised the Cash Flow Statement accordingly. We also agree with AEP's suggestion that payables be combined with accrued expenses as shown in paragraph 132 of SFAS No. 95. This was an inadvertent omission in the proposed rule.

3. Treatment of Borrowed Funds Portion of AFUDC as a Cash Item

Two commenters agreed⁷ and two disagreed⁸ with the treatment of the borrowed funds portion of AFUDC as a cash item. The Commission adheres to its proposal that the borrowed funds portion of AFUDC is a cash item and a cost that has been incurred to construct plant. It is a cash outflow the same as other capitalized expenditures such as labor, property taxes, etc.

4. Capital Leases

Certain commenters argue for the elimination of the items concerning capital leases at lines 34, 63 and 68. They state that SFAS No. 95 requires noncash transactions to be disclosed separately. AEP contends that lease payments should be included as cash items in operating activities (so no adjustment is necessary) and cites the Uniform System of Accounts Instruction 20, paragraphs C and D to support its position.

Under the Uniform System of Accounts, capitalization accounting for a lease arrangement is a noncash item. Lease payments made are accounted for through the operating activities of the company and do not require separate disclosure on this Statement. The Commission is deleting proposed items at lines 34, 63 and 68 which address leasing arrangements. The necessary information for leases will be shown on page 122, Notes to Financial Statements, as a noncash reconciliation item.

5. Other Operating Activities Items

Other suggestions pertaining to operating activities include: (1) Changing instruction No. 3 to specifically exclude gains and losses from financing and investing activities; (2) adding "undistributed subsidiary earnings" as a line item to be deducted

⁷ Detroit Edison and Transcontinental Gas Pipe Line Corporation.

⁸ New York State Department of Public Service and Public Service Electric and Gas Company.

from net income; and (3) ensuring that interest paid (net of amounts capitalized) and income taxes paid are separately reported in accordance with SFAS No. 95.

The Commission agrees with the above suggestions and the Statement has been revised to address these concerns.

6. Investing Activities

Three commenters express concern about noncurrent assets.⁹ One concern relates to the elimination from the purchase and sale of noncurrent assets of code (e) (Statement of Changes in Financial Position), which requires the respondent to separately identify investments, fixed assets, and intangibles, etc. This code was inadvertently omitted in the proposed Statement. The Commission has decided to retain this code and has redesignated the line item as code (d).

AEP suggests that the item on line 41 should be changed to read "Disposition" rather than "Sale" since it is conceivable that this line could be used to report a return of capital or a repayment of an advance, and not just a sale of the associated company. Pennsylvania Power & Light Company asks whether the Commission intends that an initial investment to acquire a subsidiary company be shown on line 31 with subsequent investments to be shown on line 40.

We have changed the item on line 41 to 50 read "Disposition of Investments in and Advances to Associated and Subsidiary Companies," to reflect not only a sale of an investment in an associated company but also returns of capital and repayments of advances. In answer to the question of Pennsylvania Power & Light Company, initial and subsequent investments in a subsidiary company should be reported on line 40, whereas lines 26 through 34 should be used to record plant construction and plant purchase costs.

Finally, the Bureau of Economic Analysis at the United States Department of Commerce requests and expansion of "Gross Additions to Utility Plant" (line 26) to a three part allocation, i.e., purchases of land, purchases of equipment and purchases of structures. The Bureau notes that the information provided to the Commission is used not only by the Commission, but also by the Bureau to prepare the official estimates of the gross national product.

The Commission prefers not to include this proposed change in the order. The data is not needed for this

Commission's regulatory processes, and we are not in a position to determine the potential value of the information in relation to the additional burden entailed in reporting it in this manner.

7. Financing Activities

Northeast Utilities and Pennsylvania Power & Light Company express concern that the Commission would require reporting financing transactions on a net proceeds (payments) basis. Northeast Utilities proposes showing financings and redemptions on a gross basis by type of issue and "segregating (as one line item) financing expenses and gains/losses resulting from redemption."¹⁰

Pennsylvania Power & Light Company contends that reporting short-term debt such as commercial paper on a gross basis would not be meaningful, and notes that FERC Form No. 1 requires reporting short-term debt on a net proceeds basis. Pennsylvania Power & Light Company also requests that the item on line 65, "Contributions and Advances from Associated and Subsidiary Companies," be reclassified as an investing activity.

The Commission agrees that, for purposes of comparison with the balance sheet, it would be more meaningful to show long-term financings and redemptions on a gross basis, with a separate line item under "Other" for financing expenses and gains or losses resulting from redemptions, and we have revised the Statement accordingly. The Commission also agrees that it would be more meaningful to report short-term debt as a "net increase (decrease)" for the year and this change has been made in the revised Statement.

Upon reflection, the Commission believes that transactions between associated companies are so intertwined that more meaningful reporting and disclosure would be accomplished by reclassifying "Contributions and Advances from Associated and Subsidiary Companies" as an investing activity. Accordingly, the item on line 65 has been repositioned to line 39.

8. Cash and Cash Equivalents

Ohio Edison asks how the Commission intends "to tie the beginning and ending cash and cash equivalent balances to the balance sheet included in Form No. 1" as is required by paragraph 7 of SFAS No. 95.¹¹ Also,

Ohio Edison asks, since paragraph 8 of SFAS 95 "defines cash equivalents as, generally, only investments with original maturities of three months or less", does the Commission plan to require a division of Account 136, Temporary Investments, into one account for investments of three months or less and one for other investments. If this is not done, then Ohio Edison suggests that the Commission should be more specific about what it means by cash and cash equivalents and whether there needs to be a direct relationship between the proposed statement and the Form No. 1 balance sheet.

The Commission adopts the definition of cash equivalents at paragraph 8 of SFAS No. 95. The Commission does not intend to divide Account No. 136 into short and long term portions, but instead believes that the same purpose will be accomplished by requiring a reconciliation between cash and cash equivalents on the Cash Flow Statement and the related accounts on the balance sheet. Therefore, Instruction No. 1 has been expanded to require such a reconciliation on page 122, Notes to Financial Statements.

9. Miscellaneous

Columbia Gas Transmission Corporation and Pennsylvania Power & Light Company recommend that the Commission revise lines 22, 52 and 84 of the Statement to make it more explicit that the total for each section may have a positive or negative cash flow. The Commission agrees and has revised the Statement accordingly.

IV. Paperwork Reduction Act

The Paperwork Reduction Act (PRA)¹² and the Office of Management and Budget's (OMB) regulations¹³ require that OMB approve certain information and recordkeeping requirements imposed by an agency. The information collection requirements in this order are contained in FERC Form No. 1, "Annual Report or Major electric utilities, licensees and others"; FERC Form No. 1-F, "Annual report for Nonmajor public utilities and licensees"; FERC Form No. 2, "Annual report for natural gas companies"; FERC Form No. 2-A, "Annual report for Nonmajor natural gas companies" and FERC Form No. 6, "Annual report of oil pipeline companies."

The Commission uses the data collected in these annual reports to carry out its regulatory responsibilities pursuant to the Federal Power Act, the

⁹ See American Public Power Association, AEP and Pennsylvania Power & Light Co.

¹⁰ Northeast Utilities comments at p. 2.

¹¹ Ohio Edison's comments at p. 2.

¹² 44 U.S.C. 3501-3520 (1982).

¹³ 5 CFR 1320.12 (1988).

Natural Gas Act and the Interstate Commerce Act. Electric utilities, natural gas companies and oil pipeline companies subject to the Commission's jurisdiction are required to file these forms annually. The hours listed previously in this preamble reflect the total amount of time required to complete these annual report forms. The Commission believes the replacement of one statement with another similar one will not change or increase the reporting burden for these annual report forms. Additionally, the Commission notes that the information requested is already available to the regulated companies. The Commission also believes the change will avoid a burden increase since the regulated "companies" will not be required to prepare one statement for general reporting purposes and another statement for the Commission's reporting requirements.

The change in statements provided in this order will not change either the number of filings or the time requirements currently in the OMB inventory for each determination. The Commission estimates that the total annual reporting burden for each of these annual reports will remain the same.

This order is being submitted to the OMB for its information collection review. Interested persons may obtain information on the requirements of the proposed statement by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (Attention: Marian Obis, (202) 357-8713). Comments on the information collection requirements in the proposed statement can be sent to the Office of Information and Regulatory Affairs of OMB, Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) ¹⁴ requires agencies to prepare certain statements, descriptions and analyses of proposed rules that will have a "significant economic impact on a substantial number of small entities". The Commission is not required to make such analyses if a rule would not have such an impact.

As the commission noted in the NOPR, most electric utilities, natural gas companies and oil pipeline companies that will be affected by this order do not fall within the RFA's definition of small

entity. There were no comments on the Commission's certification in the NOPR. Therefore, the Commission certifies that this order will not have a significant economic impact on a substantial number of small entities.

VI. Environmental Statement

The Commission will not prepare an environmental assessment or an environmental impact statement in this rulemaking docket. This order involves information gathering, analysis and dissemination and therefore is categorically exempt from the requirement to prepare an environmental assessment.¹⁵

VII. Effective Date

This order is effective November 18, 1988.

List of Subjects

18 CFR Part 141

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 260

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 357

Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission is amending the annual report forms referenced in Parts 141, 260 and 357 in Chapter I, Title 18, *Code of Federal Regulations*.

By the Commission.

Lois D. Cashell,
Secretary.

Appendix A—Companies Filing Comments in Docket No. RM88-18-000

- (1) American Electric Power Service Corporation
- (2) American Public Power Association
- (3) Columbia Gas Transmission Corporation
- (4) U.S. Department of Commerce, Bureau of Economic Analysis
- (5) Detroit Edison
- (6) New York State Department of Public Service
- (7) New York State Electric and Gas Corporation
- (8) Northeast Utilities
- (9) Ohio Edison
- (10) Pennsylvania Power and Light Company
- (11) Price Waterhouse
- (12) Public Service Electric and Gas Company
- (13) Public Service Indiana
- (14) Transcontinental Gas Pipe Line Corporation

[FR Doc. 88-24026 Filed 10-18-88; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 86F-0281]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aspartame as a sweetener in the fillings of cookies. This action responds to a petition filed by Holland American Wafer Co. and to a comment on the petition.

DATES: Effective October 19, 1988; written objections and requests for a hearing by November 18, 1988.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In a notice published in the *Federal Register* of July 22, 1986 (51 FR 26308), FDA announced that a food additive petition (FAP 6A3912) had been filed by Holland American Wafer Co., 3300 Roger B. Chaffee Dr. SE., Grand Rapids, MI 49508, proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the safe use of aspartame as a sweetener in wafer cookies.

The agency has determined that the phrase "use of aspartame as a sweetener in wafer cookies" used in the filing notice is confusing. The petition requested the use of aspartame in the filling for any wafer-like cookie and not in the wafer itself. Therefore, to clarify the intent of the petition, the agency has reworded the requested use to "the safe use of aspartame as a sweetener in the filling of wafer cookies."

The agency received one comment on the notice. The comment requested that FDA consider the petition to be asking for a regulation for the use of aspartame in all fillings, between cookies and crackers, that do not undergo heat treatment. The comment did not provide data to support its request for the use as aspartame in all fillings used between cookies and crackers. The petition,

¹⁴ 5 U.S.C. 601-612 (1982).

¹⁵ See 18 CFR 380.4(a)(5) (1988).

however, contains sufficient information to support the use of aspartame in all fillings that are used between cookies, as suggested in the comment. This finding has been incorporated in the order set forth below. However, additional data in the form of a petition are required before the use of aspartame in the fillings used between crackers can be allowed.

Based on its evaluation of the comment, the data in the petition, and other relevant material, FDA concludes that the proposed use is safe. Therefore, the agency is amending 21 CFR 172.804 by adding a new paragraph (c)(18) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before November 18, 1988 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual

information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 172.804 is amended by adding a new paragraph (c)(18) to read as follows:

§ 172.804 Aspartame.

* * * * *

(c) * * *

(18) The fillings of prebaked cookies.

* * * * *

Dated: October 12, 1988.

John M. Taylor,
Associate Commissioner for Regulatory
Affairs.

[FR Doc. 88-24159 Filed 10-18-88; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8232]

Income Tax; Credit for Clinical Testing Expenses for Certain Drugs for Rare Diseases or Conditions

AGENCY: Internal Revenue Service,
Treasury.

ACTION: Corrections to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the *Federal Register* on October 3, 1988 (53 FR 38708) as Treasury Decision 8232. The rules relate to the credit for clinical testing expenses for certain drugs for rare diseases or conditions.

FOR FURTHER INFORMATION CONTACT: Stuart G. Wessler, (202) 566-3822 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final rules that are the subject of this correction notice provided the public with the guidance needed to comply with the law (as enacted by the Orphan Drug Act) and affect taxpayers seeking to obtain the credit.

Need for Corrections

As published, Treasury Decision 8232 contains several typographical errors that might cause confusion to taxpayers and practitioners.

Correction of Publication

Accordingly, the publication of Treasury Decision 8232, which was the subject of FR Doc. 88-22375, is corrected as follows:

PART 1—[AMENDED]

§ 1.28-0 [Amended]

Paragraph 1. In § 1.28-0(d)(5)(iv), on page 38711, column 1, lines 13 and 14, which read, "(D) Lease payments and payments for supplies." should be removed and the language "(D) Lease payments." added in its place.

Par. 2. In § 1.28-0(d)(5)(iv), on page 38711, column 1, the language "(E) Payments for supplies." should be added immediately after the line which was corrected to read, "(D) Lease payments."

§ 1.28-1 [Amended]

Par. 3. In § 1.28-1(d)(1)(ii), on page 38712, column 2, line 4, which reads, "this subdivision, the taxpayer's" should be removed and the language "this paragraph (d)(1)(ii), the taxpayer's" added in its place.

Note.—For a Federal Register correction to this document see the Corrections section of this issue.

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief
Counsel (Corporate).

[FR Doc. 88-24014 Filed 10-18-88; 8:45 am]

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